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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
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WISCONSIN

RE: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 Petitioners' Alternative Rulemaking Proposal*
CC Docket No. 96-128

Dear Ms. Dortch:

Martha Wright, *et al.* ("Petitioners"), by and through her attorneys, respectfully submit into the record of the above-referenced proceeding this additional information in support of the Petitioners' Alternative Rulemaking Proposal (the "Alternative Proposal"), which was filed with the Commission on March 1, 2007. To date, there has been no action on the 2007 Alternative Proposal, which was submitted three and half years after the Petitioners submitted its Petition for Rulemaking on October 31, 2003.¹

As discussed in the Petitioners previous submissions, the Commission has clear authority to establish benchmark rates for interstate inmate telephone services. Section 201(b) of the Act provides that "[a]ll charges [or] practices . . . for and in connection with [interstate or foreign communication by wire or radio] . . . shall be just and reasonable, and any such charge [or] practice . . . that is unjust or unreasonable is hereby declared to be unlawful."²

Section 205(a) of the Act provides that when the Commission finds a rate to be in violation of any provision of the Act, the Commission is authorized to prescribe a just and reasonable rate, including a maximum or minimum.³ Section 201(b) also authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."⁴

¹ Attached hereto as Exhibit A is a table providing links to the relevant submissions in the record relating to this matter.

² 47 U.S.C. § 201(b).

³ 47 U.S.C. § 205(a).

⁴ 47 U.S.C. § 201(b).

In the recent *Connect America Fund Order*, relying on Supreme Court precedent, the Commission confirmed that its “rulemaking authority under 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies. . . .”⁵ When the district court referred the *Wright* case to the Commission, the court recognized that “Congress has given the FCC explicit statutory authority to regulate inmate payphone services. . . .”⁶ Therefore, the Commission may lawfully employ its explicit rulemaking authority to establish benchmark rates for inmate telephone services, which it has explicit statutory authority to regulate.

The Commission has used rate comparisons, benchmarks, and other factors to evaluate the justness and reasonableness of rates in a variety of proceedings, including rulemakings.⁷ In *AT&T Corp. v. Business Telecom, Inc.*, (“BTI”) the Commission based its assessment of reasonableness on comparable rates in a formal complaint case.⁸ AT&T and Sprint brought a complaint under Section 208 of the Act against BTI alleging that BTI’s access rates were unjust and unreasonable under Section 201(b). The Commission compared BTI’s access rates to other, comparable rates and found they were substantially higher without justification, thereby violating Section 201(b) of the Act.

In choosing to use a comparable rate method in determining whether BTI’s rates were unjust and unreasonable, the FCC recognized that it holds broad discretion in selecting methods to evaluate the reasonableness of rates and stated, “As long as the Commission makes a reasonable selection from the available alternatives, its selection of rate evaluation methods will be upheld, even if the court thinks that a different decision would have been more reasonable.”⁹

When the market fails to constrain rates for a given service, the Commission looks to the rates charged for other services using comparable network functions to assess the reasonableness of the service rate in question. The Commission has recognized that “services offered under substantially similar circumstances using similar facilities lead to the expectation of similar charges.”¹⁰

⁵ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17,663 (2011) (citing *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999)).

⁶ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 10-11 (D.D.C. Aug 22, 2001) (citing 47 U.S.C. § 276(d)) (appended as Attachment B to the original *Wright* Petition).

⁷ *AT&T Corp. v. Business Telecom, Inc.*, 16 FCC Rcd 12312, 12324 (2001), recon. denied, 16 FCC Rcd 21750 (2001). See also, *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9940-41 (establishing benchmark based on comparable rates in a rulemaking proceeding); *Beehive Tel. Co., Inc.*, 13 FCC Rcd 12275, 12285-87 (1998) (prescribing rates in a tariff investigation based on costs and investments of comparable carriers).

⁸ 16 FCC Rcd 12312 (2001).

⁹ *BTI*, 16 FCC Rcd at 12325 (citing *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1334 (D.C. Cir. 1999)).

¹⁰ *Beehive* at 12324.

As discussed at length in this proceeding, the market fails to constrain rates for inmate telephone services because the party paying the rate is not the party choosing the carrier. Therefore, the Petitioners request that the Commission utilize its explicit authority, as articulated in cases such as *BTI* and *Beehive*, and establish benchmark rates for interstate inmate telephone rates.

Respectfully submitted,



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EXHIBIT A

Party	Document	Date	URL
Martha Wright, <i>et al.</i>	Petition for Rulemaking	11/3/2003	http://apps.fcc.gov/ecfs/document/view?id=6515782164
Evercom Systems, Inc.	Comments	3/10/2004	http://apps.fcc.gov/ecfs/document/view?id=6516082461
T-NETIX, Inc.	Comments	3/10/2004	http://apps.fcc.gov/ecfs/document/view?id=6516082433
Martha Wright, <i>et al.</i>	Reply to Comments	4/21/2004	http://apps.fcc.gov/ecfs/document/view?id=6516088923
Evercom Systems, Inc.	Reply to Comments	4/21/2004	http://apps.fcc.gov/ecfs/document/view?id=6516088916
T-NETIX, Inc.	Reply to Comments	4/21/2004	http://apps.fcc.gov/ecfs/document/view?id=6516088882
Martha Wright, <i>et al.</i>	Petitioner's Alternative Rulemaking Proposal	3/1/2007	http://apps.fcc.gov/ecfs/document/view?id=6518909011
Embarq	Comment	5/2/2007	http://apps.fcc.gov/ecfs/document/view?id=6519408675
T-NETIX, Inc. and Evercom Systems, Inc.	Comment	5/2/2007	http://apps.fcc.gov/ecfs/document/view?id=6519408588
Global Tel*Link Corp.	Comment	5/2/2007	http://apps.fcc.gov/ecfs/document/view?id=6519408408
Pay Tel Communications, Inc.	Comment	5/2/2007	http://apps.fcc.gov/ecfs/document/view?id=6519408488
T-NETIX, Inc. and Evercom Systems, Inc.	Reply to Comments	6/20/2007	http://apps.fcc.gov/ecfs/document/view?id=6519533598
Martha Wright, <i>et al.</i>	Reply to Comments	6/20/2007	http://apps.fcc.gov/ecfs/document/view?id=6519533588
Securus Technologies, Inc.	Letter	5/23/2008	http://apps.fcc.gov/ecfs/document/view?id=6520011071
Several Inmate Service Providers	Interstate Cost Study	8/15/2008	http://apps.fcc.gov/ecfs/document/view?id=6520038337
Martha Wright, <i>et al.</i>	Cost Study	12/23/2008	http://apps.fcc.gov/ecfs/document/view?id=6520192180
Pay Tel Communications, Inc.	Ex Parte Letter	6/18/2009	http://apps.fcc.gov/ecfs/document/view?id=6520220946
Martha Wright, <i>et al.</i>	Ex Parte Notice	11/5/2009	http://apps.fcc.gov/ecfs/document/view?id=7020245810
Securus Technologies, Inc.	Ex Parte Notice	10/11/2011	http://apps.fcc.gov/ecfs/document/view?id=7021713777
Martha Wright, <i>et al.</i>	Ex Parte Notice	12/21/2011	http://apps.fcc.gov/ecfs/document/view?id=7021751407